IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FIRST DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR JUSTICE K.C. BHANU

W.P. Nos.7888 of 1996 & 16475 of 2001

W.P. No.7888 of 1996

Between:

Vijaya Bank, ARM Branch,

Rep. by its Chief Manager **.. Petitioner**

AND

1. The Government of A.P.

Rep. by its Secretary,

Irrigation and CAD (Project Wing SRSP-II) Dept.,

Secretariat, Hyderabad.

2. The Superintending Engineer

Sriramsagar Project, Godavari Valley,

Circle-IV, Lower Maner Dam Colony,

Karimnagar.

3. The Superintending Engineer

Sriramsagar Project, Construction Circle,

Husurabad, Karimnagar District.

4. M. Mohan Reddy S/o. Venkatapathi Reddy

aged about 42 years, Engineering Contractor,

R/o.8-2-334/30, Road No.3, Banjara Hills, Hyderabad.

… Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, Direction or Order, commanding the respondents 1 to 3 to refund the sum of Rs.3,00,02,078/- to the Writ Petitioner which has been excess collected under the Bank Guarantees 101 of 88, 103 of 88, 102 of 88, 104 of 88, 99 of 88, 100 of 88, 7 of 90 and 28 of 91 with interest at the rate of 24%.

Counsel for the Petitioner: Sri B.V. Rama Mohan Rao

Counsel for Respondent Nos.1 to 3: The Advocate General.

Counsel for Respondent No.4: Sri P. Kamalakar.

W.P. No.16475 of 2001

Between:

Vijaya Bank, ARM Branch,

Rep. by its Chief Manager,

Hyderabad.

.. Petitioner

AND

1. The Government of A.P.

Rep. by its Secretary,

Irrigation and CAD (Project Wing SRSP-II) Dept.,

Secretariat Buildings, Hyderabad.

2. M. Mohan Reddy S/o. Venkatapathi Reddy

aged about 51 years, Engineering Contractor,

210, Manjari Apartments, Somajiguda, Hyderabad.

… Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ in the nature of Writ of Mandamus or any other appropriate Writ, direction or Order, calling for the records pertaining to G.O. Ms.No.151, Irrigation and C.A.D. Department, dated 09-12-1999 issued by the 1st respondent, Government of A.P., represented by its Secretary, Irrigation and CAD (Project Wing SRSP-II) Department, Secretariat Buildings, Hyderabad, and declare the same as illegal, arbitrary and violative of Articles 14, 19(1)(g) and 300 A of the Constitution.

Counsel for the Petitioner: Sri B.V. Rama Mohan Rao

Counsel for Respondent No.1: Advocate General.

Counsel for Respondent No.2: Sri P. Kamalakar.

The Court made the following Common order :

–

–

–

–

–

COMMON ORDER:

We have heard the learned counsel for the petitioner-bank Sri B.V. Rama Mohan Rao, and as well as learned counsel appearing on behalf of the 4th

respondent. Having heard the learned counsel for the petitioner, we propose to set aside our common order, dated 16-10-2003, dismissing the writ petitions in the following manner:

> "In view of the orders passed by us today in W.P. No.19646 of 1993, no further adjudication is necessary in these matters. Sri B.V. Ram Mohan Rao, learned counsel for the petitioners also submitted that leave may be granted to the petitioners to avail such remedies as may be available to them in law.
>
> We grant leave accordingly permitting the petitioners to avail such remedies as may be available to them in law.
>
> The Writ Petitions are accordingly dismissed. No order as to costs."

We have re-heard both the writ petitions on merits.

Shorn of all the details, the question that falls for consideration in both these writ petitions is whether the

1st respondent-Government of Andhra Pradesh is justified in invoking the bank guarantees executed by the 4th respondent-contractor in favour of respondent Nos.1 to 3. The bank guarantees have been given by the petitioner-bank. The bank guarantees that have been already invoked by the 1st respondent is in the nature of tripartite agreement entered between the petitioner-bank on the one hand and respondent Nos.1 to 3 as well as the 4th respondent on the other hand. It is an unconditional bank guarantee offered by the 4th respondent-contractor. The petitioner-bank having given an unconditional undertaking giving liberty to respondent Nos.1 to 3 to invoke the bank guarantee at any time, cannot be permitted to turn around now and question the action of respondent Nos.1 to 3 in invoking the bank guarantee. A Writ of Mandamus as prayed for, commanding respondent Nos.1 to 3 to refund certain specified amount, which is alleged to have been collected in excess of what actually

could have collected according to the terms of contract originally entered by and between respondent Nos.1 to 3 and respondent No.4 does not lie. It is not the case of the petitioner that it had paid certain amounts beyond what is stipulated and provided for in the bank guarantee. Whether in the given situation, respondent Nos.1 to 3 could have invoked the bank guarantee at all, is the dispute raised in these writ petitions. It has been repeatedly held by the Supreme Court that such disputes cannot be resolved in a public law remedy and the disputes, if any, between the parties are required to be resolved in a common law proceeding.

It is very fairly brought to the notice of this Court by the learned counsel for the petitioner that a suit had already been filed by the petitioner-bank in this regard which stood transferred to the Debts Recovery Tribunal, Hyderabad, and is pending in O.A. No.467 of 1999 and awaiting adjudication. The suit has been filed for realisation of certain amounts on the grounds that are raised in these writ petitions and may be on some other grounds also, about which no opinion could be expressed in these writ petitions.

In such view of the matter, we find no merit in both the writ petitions. The writ petitions deserve dismissal and they are accordingly dismissed without any order as to costs.

However, we make it clear that the dismissal of these writ petitions shall have no bearing whatsoever upon the proceedings in O.A. No.467 of 1999 pending on the file of the Debts Recovery Tribunal, Hyderabad. The proceedings are required to be disposed of on its own merits uninfluenced by the observations, if any, made in this order and as well as the dismissal of these writ petitions.

_____

B. SUDERSHAN REDDY, J

Date:01-11-2004.

_____

K.C. BHANU, J

NOTE:

Furnish copy of the order by 03-11-2004.

(B/O.)

PV

NOTE:

After signing of this common order by BRSR,J & KCB,J, and after dispatching the same, BRSR,J directs the Office to place one copy each of this common judgment in respective original bundle of each application (which are disposed of by this common order) for ready reference and record purpose.

(B/O)

PV

To

1. The Secretary

Irrigation and CAD (Project Wing SRSP-II) Dept.,

The Government of Andhra Pradesh

Secretariat, Hyderabad.

2. The Superintending Engineer

Sriramsagar Project, Godavari Valley,

Circle-IV, Lower Maner Dam Colony,

Karimnagar.

3. The Superintending Engineer

Sriramsagar Project, Construction Circle,

Husurabad, Karimnagar District.

4. Two C.Cs. to learned Advocate General, High Court of A.P.,
High Court Building, Hyderabad (O.U.T.)

5. Two C.D. copies.